

**BOROUGH OF WESTWOOD  
ZONING BOARD OF ADJUSTMENT  
SPECIAL MEETING  
MINUTES  
March 8, 2010**

**APPROVED 4/5/10**

**1. OPENING OF THE MEETING**

The meeting was called to order at approximately 8:00 p.m.

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a Special Meeting of the Westwood Zoning Board.

Notices have been filed with our local official newspapers and posted on the municipal bulletin board.

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL:**

**PRESENT:** Eric Oakes  
Michael Bieri  
Guy Hartman  
Raymond Arroyo, Vice-Chairman  
William Martin, Chairman  
Robert Bicocchi  
Christopher Owens  
Vernon McCoy (Alt #1)  
Matthew Ceplo (Alt. #2)

**ALSO PRESENT:** David Rutherford, Esq., Board Attorney  
Louis Raimondi, Brooker Engineering,  
Board Engineer

**ABSENT:** David Spatz, Planner to be substituted for  
Steve Lydon, Burgis Associates, Board  
Planner - In matter of Pompilio's Pizza

**4. MINUTES - None**

**5. CORRESPONDENCE: None**

**6. VOUCHERS: None**

**7. RESOLUTIONS: None**

**8. PENDING NEW BUSINESS: None**

(WWZB 3/8/10)

**9. VARIANCES, SUBDIVISIONS AND/OR SITE PLANS, APPEALS, INTERPRETATIONS:**

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS  
The Board Professionals were sworn in.

**1. Pompilio's Pizza, Inc., 221-223 Westwood Ave. - Variance for Expansion -** (Steve Lydon recused; David Spatz to be Substitute Planner)

John J. Lamb, Esq. and Donald Nemcik, Esq. appeared. Mr. Lamb advised they reached a settlement agreement which was then executed, limiting the amount of seating during certain hours. Based on the agreement, Mr. Lamb said they have no objections to notice or standing, nor are there any other objections remaining, and they will amend the application as a result of this agreement. What they did very simply is the original 66 seats would be 32 during the day and Monday through Saturday. The applicant is seeking an application for approval of an additional 13 seats or 45 after 5:00 p.m. on Saturday and on Sunday, and during any holiday when a substantial portion of the retail business is closed. There will be a gourmet component, proposing a pastry shop in the expanded premises, 221 Westwood Avenue. As a condition, the applicant will provide interior and exterior improvements and expanded garage area. Mr. Meisel would make a brief statement, he advised. Counsel will advise how they will proceed with revised plans, such as revised floor plans.

Mr. Nemcik stated his architect will present revised plans. Mr. Rutherford advised Mr. Nemcik should bring his revised plan and amended application before the Board. Mr. Nemcik advised they submitted various documents. Mr. Rutherford understands there is a Settlement Agreement as part of the application. We will proceed with Mr. Lamb's client, go through the additional information that Mr. Nemcik provided as a result of the last hearing, and at that point, we will then need revised plans. Mr. Rutherford advised the Lease Agreement provided was marked Exhibit A1, a 30-page Lease between F&J Real Estate and Pompilio's Pizza. Based on that, he would recommend any standing issue has been resolved. It does contain a contingency on the action taken by this Board. Mr. Lamb's letter dated 3/5/10, encompassing the Settlement Agreement was marked Exhibit 06 for identification, as part of the record.

(WWZB 3/8/10)

Mr. Meisel was sworn in and thanked the Board for allowing him to be heard. There were certain principals that were important to him. He did not object conceptually, but the application, in his view, was important to be thought through. It is not only a settlement, but it is also an acknowledgment of what is in the best interests of the community as a whole. The fact that we have vacancies in this economic climate is a hardship, but limiting these vacancies is a healthy thing. We are mitigating certain factors, such as not having restaurants on Westwood Avenue. During the day when we have the least amount of parking available, we have limited seating, increased in the evening when more parking becomes available due to retail being closed. The addition of a gourmet element is more in line with the retail uses on the street, as it adds a retail aspect as well. This was not one of the properties held up as being over improved. The property is somewhat in decay, and there has been an agreement for substantial improvement which will benefit the block and the community as a whole. We have annunciated some need and principles which we will carry forward.

There were no questions of Mr. Meisel. Mr. Lamb and Mr. Meisel took a seat in the audience. Mr. Rutherford addressed the applicant as to how they would proceed. Mr. Benanti, the architect, should prepare a revised plan, which would be entered into the record.

Mr. Nemcik introduced the landlord's attorney, Mr. Bazinski, from Toms River, NJ for F&R Realty, who was present regarding the documentation related to non-conforming use. He asked does the Board wish to question the applicant or her attorney regarding Section 68. Mr. Rutherford advised he would recommend that Mr. Nemcik republish and renotice, since there has been a fairly significant change in the application.

Mr. Martin made an observation. Mr. Nemcik filed a Section 68 application because the objector felt there was insignificant evidence that this use was in use previously. Mr. Nemcik only has to show the property was legally operating as a restaurant as of that date when it was a permitted use. It may be a simple thing to do, having the landlord come up and say they are in existence as a restaurant since before 1964.

Ken Zazinski, Esq. came forward with his client, Maria Fernandez, who remained under oath. He prepared the Lease and

(WWZB 3/8/10)

could answer any questions. Ms. Fernandez was questioned by Mr. Nemcik. She is a principal of F&J Realty. Her partner, Laura Jeiven, was out of town that evening. She signed the lease allowing the applicant to expand the restaurant and make improvements. As to the situation regarding prior non-conforming use, the Board is asking for testimony from her. She has owned the property since the 1970's, and Pompilio's rented it since 1977. Prior to that, it was Andy's Pizzeria and Italian Restaurant. It has been a continuous use as a restaurant since before 1964. The applicant is also required to make renovations to the outside of the property. Mr. Martin commented it is evident this has been in use since before the zoning changed. There were no questions or comments regarding the Section 68 issue. Mr. Martin asked Mr. Rutherford if it is a separate issue. Mr. Rutherford advised if found to be a pre-existing, non-conforming use, it would be a D2 variance. If the Board feels it has sufficient evidence, it can proceed to a motion. A motion for approval of a Section 68 Certificate for pizzeria/restaurant was made by Mr. Arroyo and seconded by Mr. Owens. On roll call vote, all members voted yes.

Mr. Benanti was present for any questions regarding the reconfiguration of the seating or to answer any other questions. Mr. Martin asked Mr. Rutherford for advice on a voting question, since Alternate No. 1 sat in on the proceeding, but then Mr. Hartman listened to the C/D. He asked if the Alternate should be eligible and continue since he started the application. Mr. Rutherford would research the question and advise. The vote just taken related only to that portion of the application. Mr. Nemcik commented the D2 variance might have a bearing on the plan and asked if there were any outstanding factors that the plans need to address. Mr. Martin commented they needed to see the plan. Mr. Benanti should be given a copy of the Settlement Agreement, and he would know. The Board cannot tell him what to put on the plan. Mr. Nemcik asked if there was anything else required by the Board due to special circumstances. Mr. Rutherford advised they should file the plan as soon as possible, and they would have Mr. Spatz the Planner look at it and give a report, since now there is a retail component. Mr. Martin commented all the items outlined in the Settlement Agreement should be on the plan.

(WWZB 3/8/10)

The matter was carried to a Special Meeting on 4/12/10 on motion of Mr. Oakes, seconded by Mr. Arroyo and carried unanimously on roll call vote.

**10. DISCUSSION:** None

**11. ADJOURNMENT** - On motions, made seconded and carried, the meeting was adjourned at approx. 8:50 p.m.

**Respectfully submitted,**

---

**MARY R. VERDUCCI, Paralegal**  
**Zoning Board Secretary**